

¹ 5 U.S.C. § 8101 *et seq.*

at work. OWCP accepted that appellant sustained a left closed fracture at the lower end of the radius with the ulna.²

Appellant was treated conservatively for her left wrist fracture and she underwent a functional capacity evaluation on October 9, 2015.

In an October 22, 2015 report, Dr. Benjamin Graves, an attending Board-certified orthopedic surgeon, reported the findings of his physical examination of appellant. He indicated that appellant was able to flex and extend her wrists with near symmetric range of motion. Appellant's left hand showed no gross deformity or lesions and light sensation was present in her left upper extremity. Dr. Graves indicated that the September 17, 2015 left wrist x-rays showed a healed fracture with no obvious bony abnormality and he diagnosed "other closed extra-articular fracture of distal end of left radius with routine healing." He noted that, under the North Carolina Commission Rating Guide, appellant had five percent permanent impairment of her left hand.

On November 18, 2015 appellant filed a claim for compensation (Form CA-7) claiming a schedule award due to her accepted employment injury.

On November 30, 2015 Dr. Arthur S. Harris, a Board-certified orthopedic surgeon serving as an OWCP medical adviser, indicated that he had reviewed the medical evidence of record, including the October 22, 2015 examination findings of Dr. Graves. He found that, under the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (6th ed. 2009) (A.M.A., *Guides*), appellant had three percent permanent impairment of her left upper extremity. Dr. Harris indicated that appellant reached maximum medical improvement on October 22, 2015 and noted, "For purposes of calculating [s]chedule [a]ward utilizing [the sixth edition of the A.M.A., *Guides*], the claimant has three percent upper extremity impairment for residual problems status post fracture left distal radius [Class of Diagnosis 1C] (Table 15-3/Page 396)."

By decision dated December 10, 2015, OWCP granted appellant a schedule award for three percent permanent impairment of her left upper extremity. It was based on the November 30, 2015 impairment rating of Dr. Harris, the OWCP medical adviser who reviewed the medical findings of record, including the October 22, 2015 examination findings of Dr. Graves. The award ran for 9.36 weeks from October 22 to December 26, 2015.

LEGAL PRECEDENT

The schedule award provision of FECA³ and its implementing regulations⁴ set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, FECA does not

² Appellant stopped work after her April 16, 2015 injury and received disability compensation on the daily rolls beginning June 5, 2015.

³ 5 U.S.C. § 8107.

⁴ 20 C.F.R. § 10.404.

specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for evaluating schedule losses.⁵ The effective date of the sixth edition of the A.M.A., *Guides* is May 1, 2009.⁶

In determining impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated. With respect to the wrist, the relevant portion of the arm for the present case, reference is made to Table 15-3 (Wrist Regional Grid) beginning on page 395. After the Class of Diagnosis (CDX) is determined from the Wrist Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the grade modifier for Functional History (GMFH), grade modifier for Physical Examination (GMPE), and grade modifier for Clinical Studies (GMCS). The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).⁷ Under Chapter 2.3, evaluators are directed to provide reasons for their impairment rating choices, including choices of diagnoses from regional grids and calculations of modifier scores.⁸

ANALYSIS

OWCP accepted that on April 16, 2015 appellant sustained a left closed fracture at the lower end of the radius with the ulna. On November 18, 2015 appellant filed a claim for compensation (Form CA-7) claiming a schedule award due to her accepted employment injury. By decision dated December 10, 2015, OWCP granted her a schedule award for three percent permanent impairment of her left upper extremity. The award was based on the November 30, 2015 impairment rating of Dr. Harris, a Board-certified orthopedic surgeon serving as an OWCP medical adviser. Dr. Harris reviewed the medical findings of record, including the October 22, 2015 examination findings of Dr. Graves, an attending Board-certified orthopedic surgeon.⁹

On November 30, 2015 Dr. Harris indicated that he had reviewed the medical evidence of record, including the October 22, 2015 examination findings of Dr. Graves. He found that, under the sixth edition of the A.M.A., *Guides*, appellant had three percent permanent impairment of her left upper extremity. Dr. Harris noted, “For purposes of calculating [s]chedule [a]ward utilizing

⁵ *Id.* See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (January 2010); and Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 (January 2010).

⁶ Federal (FECA) Procedure Manual, Part 2 *id.* at Chapter 2.808.5a (February 2013).

⁷ See A.M.A., *Guides* 401-11 (6th ed. 2009). Table 15-3 also provides that, if motion loss is present for a claimant who has certain wrist conditions denoted by an asterisk on the table, impairment may alternatively be assessed using section 15.7 (range of motion impairment). Such a range of motion impairment stands alone and is not combined with a diagnosis-based impairment. *Id.* at 397, 475-78.

⁸ *Id.* at 23-28.

⁹ The Board notes that Dr. Graves provided an impairment rating but that it was not calculated under the relevant standards of the sixth edition of the A.M.A., *Guides*. See *supra* note 6.

[the sixth edition of the A.M.A., *Guides*], the claimant has three percent upper extremity impairment for residual problems status post fracture left distal radius [Class of Diagnosis 1C] (Table 15-3/Page 396).”

The Board notes that Dr. Harris chose a diagnoses-based impairment (wrist fracture) for appellant’s left upper extremity and assigned her condition the default value of three percent impairment under Table 15-3 of the sixth edition of the A.M.A., *Guides*.¹⁰ However, Dr. Harris did not perform a complete impairment rating evaluation in that he did not derive any grade modifiers (including those for functional history, physical examination, and clinical studies) or apply the net adjustment formula for appellant’s left upper extremity condition.¹¹

While the claimant has the burden to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence.¹² Accordingly, once OWCP undertakes to develop the medical evidence, it has the responsibility to do so in the proper manner.¹³ Therefore, the case shall be remanded to OWCP to address the above-mentioned aspects of the OWCP medical adviser’s rating of appellant’s left upper extremity impairment. After carrying out such development, OWCP shall issue a *de novo* decision regarding appellant’s left upper extremity impairment.

CONCLUSION

The Board finds that the case is not in posture for decision regarding whether appellant has more than three percent permanent impairment of her left upper extremity, for which she received a schedule award. The case is remanded to OWCP for further development.

¹⁰ A.M.A., *Guides* 396, Table 15-3.

¹¹ See *supra* notes 7 and 8.

¹² *Russell F. Polhemus*, 32 ECAB 1066 (1981).

¹³ See *Robert F. Hart*, 36 ECAB 186 (1984).

ORDER

IT IS HEREBY ORDERED THAT the December 10, 2015 decision of the Office of Workers' Compensation Programs is set aside and the case remanded to OWCP for further proceedings consistent with this decision of the Board.

Issued: April 7, 2016
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board